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09/545,639

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04/07/2000

First Named Inventor

Cunningham

Art Unit

2143

Examiner Name

Vaughn

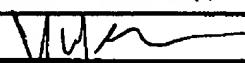
Attorney Docket Number

U000-P02036US

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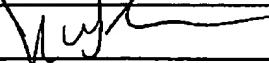
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	SoCal IP Law Group, LLP		
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Printed name	Joel G. Landau		
Date	November 8, 2005	Reg. No.	54,732

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No.	:	09/545,639	Confirmation No.	9723
Applicant	:	Cunningham		
Filed	:	04/07/2000		
TC/A.U.	:	2143		
Examiner	:	Vaughn		
Docket No.	:	U000-P02036US		
Customer No.	:	33356		

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Alexandria, VA 22313-1450

**SUPPLEMENTAL APPEAL BRIEF**

Dear Sir:

The following Supplemental Appeal Brief is in response to the Detailed Action Reopening Prosecution mailed August 10, 2005. Reinstatement of the appeal is respectfully requested.

The following Appeal Brief is submitted pursuant to 37 C.F.R. § 41.37 for consideration by the Board of Appeals and Interferences.

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### **(1) REAL PARTY IN INTEREST**

The real party in interest is NetZero, Inc.

### **(2) RELATED APPEALS AND INTERFERENCES**

There are no applications currently being appealed that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **(3) STATUS OF CLAIMS**

Claims 1-23 and 33-40 were pending in the Non-Final Office Action dated 9/24/04. Claim 23 was objected to for being dependent on a rejected claim, but would be allowable if rewritten in independent form. Claims 1-22 and 33-40 were rejected. Claims 1-22 and 33-40 are the subject of this appeal.

### **(4) STATUS OF AMENDMENTS**

A Response amending claims 1, 12, 13, 33, 42, 43, 47, 56 and 57 was filed on 12/13/2004 to cure 35 U.S.C. § 112 deficiencies. In the Detailed Action Reopening Prosecution mailed 08/10/2005, the amendment filed 12/23/2004 was not addressed. It is respectfully requested that the Examiner respond to this amendment.

### **(5) SUMMARY OF CLAIMED SUBJECT MATTER**

A method of providing a user computer with access to files of a network, the method comprising: establishing a communication link from the user computer to an access control system of the network (p. 16, lines 2-6, FIG. 3, 302); launching a viewer program that controls a status of the communication link (p. 27, lines 18-20, FIG. 12, 1202); detecting times when the user computer is not actively sending or receiving data from the network, and downloading ad files from the network to the user computer during such times (p. 14, lines 12-13), such that the viewer program maintains a pool of ad files at the user computer for display and performs ad pool management tasks (p. 11, lines

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14-15, p. 33, lines 3-4, FIG. 17, 1704, p. 33, lines 9-10, FIG. 17, 1706); periodically opening a viewer program window in which a next ad file from the ad file pool is displayed (p. 14, lines 14-18, p. 35, lines 13-15, FIG. 17, 1710); hiding the viewer program window after a predetermined number of ad files from the ad file pool have been played and keeping the viewer program window hidden for a predetermined quiet interval (p. 21, lines 1-13, FIG. 6, 604 and 608); and managing the ad file pool so as to keep track of the number of times each ad file in the ad file pool has been viewed and determine when each ad file in the ad file pool should no longer be viewed (p. 33, lines 9-16, FIG. 17, 1706).

#### **(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1-3, 33-35, and 47-49 were rejected under 35 U.S.C. § 103 as obvious from Guyot et al. (USP 6,119,098) in view of Hassett et al. (USP 6,807,558) and further in view of Landsman et al. (US Pat. Pub. 2003/0023488).

Claims 4, 12-22, 36, 42-46, 50, and 56-60 were rejected under 35 U.S.C. § 103 as obvious from Guyot et al. (USP 6,119,098), in view of Hassett et al. (USP 6,807,558), further in view of Landsman et al. (US Pat. Pub. 2003/0023488) and further in view of Merriman et al. (USP 5,948,061).

Claims 5-10, 37-40, and 51-54 were rejected under 35 U.S.C. § 103 as obvious from Guyot et al. (USP 6,119,098), in view of Hassett et al. (USP 6,807,558), further in view of Landsman et al. (US Pat. Pub. 2003/0023488) and further in view of Palmer et al. (USP 6,505,773).

Claims 11, 41, and 55 were rejected under 35 U.S.C. § 103 as obvious from Guyot et al. (USP 6,119,098), in view of Hassett et al. (USP 6,807,558), further in view of Landsman et al. (US Pat. Pub. 2003/0023488) and further in view of Radziewicz et al. (USP 5,854,897).

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## (7) ARGUMENT

**Claims 1-3, 33-35 and 47-49 are patentable over Guyot et al. (USP 6,119,098), in view of Hassett et al. (USP 6,807,558) and further in view of Landsman et al. (US Pat. Pub. 2003/0023488):**

“To establish a *prima facie* case of obviousness, [...] the prior art reference (or references when combined) must teach or suggest all of the claim limitations.” *MPEP 706.02(j)*.

Claim 1 is independent and includes three steps not disclosed, taught, or suggested by the cited references.

Claim 1 recites, “launching a viewer program that controls a status of the communication link.” The Examiner asserted that Guyot teaches this step at 6:46-50. However, this section of Guyot describes a status button that is used to display or hide a status window. Choosing to show or not to show a status window is not the same or analogous to controlling a status of the communication link.

Claim 1 further recites, “detecting times when the user computer is not actively sending or receiving data from the network.” The Examiner asserted that Hassett teaches this step at 10:16-39. However, this section of Hassett is directed to downloading advertisements via an “administrative update connection.” The administrative update connection is scheduled in advance, for example, during a user’s lunch time or the middle of the night. The administrative update connection may also be accomplished after a predetermined time that a user has not inputted information via keyboard or mouse (Hassett, at 9:57 - 10:15). “Scheduling, in advance” is not “detecting.” Nor is the lack of keyboard or mouse input the same as or analogous to “the user computer is not actively sending or receiving data from the network.”

Claim 1 further recites, “downloading ad files from the network to the user computer during such times, such that the viewer program maintains a pool of ad files at the user computer for display and performs ad pool management tasks.” The Examiner asserted that Hassett teaches this step also

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at 10:16-39. As established immediately above, Hassett's downloading "times" are triggered via a preset schedule or when there is a lack of keyboard or mouse input. Thus, Hassett does not download during such times that "the user computer is not actively sending or receiving data from the network.

Since none of Guyot, Hassett or Landsman alone or in combination disclose, teach or suggest all the steps of claim 1, claim 1 is non-obvious in view of these references.

Claims 33 and 47 have steps similar to those of claim 1 discussed above, so the arguments set forth for claim 1 are applicable to claims 33 and 47. Therefore claims 33 and 47 are patentable over the cited art for the same reasons as set forth for claim 1. By virtue of their respective dependence on claims 1, 33 and 47, claims 2-3, 34-35 and 48-49 are patentable over the cited art.

Claims 4, 12-22, 36, 42-46, 50 and 56-60 are patentable over Guyot et al. (USP 6,119,098), in view of Hassett et al. (USP 6,807,558), further in view of Landsman et al. (US Pat. Pub. 2003/0023488) and further in view of Merriman et al. (USP 5,948,061):

By virtue of their respective dependence on claims 1, 33 and 47, claims 4, 12-22; 36, 42-46; and 50, 56-60 are patentable over Guyot ,in view of Hassett, further in view of Landsman. The Examiner has not set forth how Merriman teaches the steps of claims 1, 33 and 47 which Guyot, in view of Hassett and further in view of Landsman fails to teach. Therefore claims 4, 12-22, 36, 42-46, 50 and 56-60 are patentable over the cited art.

Claims 5-10, 37-40 and 51-54 are patentable Guyot et al. (USP 6,119,098), in view of Hassett et al. (USP 6,807,558), further in view of Landsman et al. (US Pat. Pub. 2003/0023488) and further in view of Palmer et al. (USP 6,505,773):

By virtue of their respective dependence on claims 1, 33 and 47, claims 5-10, 37-40; and 51-54 are patentable over Guyot, in view of Hassett and further in view of Landsman. The Examiner has not set forth how Palmer teaches the steps of claims 1, 33 and 47 which Guyot, in view of

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Hassett and further in view of Landsman fails to teach. Therefore claims 5-10, 37-40 and 51-54 are patentable over the cited art.

**Claims 11, 41 and 55 are patentable over Guyot et al. (USP 6,119,098), in view of Hassett et al. (USP 6,807,558), further in view of Landsman et al. (US Pat. Pub. 2003/0023488) and further in view of Radziewicz et al. (USP 5,854,897):**

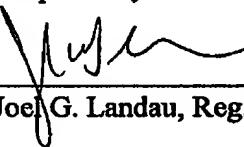
By virtue of their respective dependence on claims 1, 33 and 47, claims 11, 41 and 55 are patentable over Guyot, in view of Hassett and further in view of Landsman. The Examiner has not set forth how Radziewicz teaches the steps of claims 1, 33 and 47 which Guyot, in view of Hassett and further in view of Landsman fails to teach. Therefore claims 11, 41 and 55 are patentable over the cited art.

#### **CONCLUSION AND RELIEF**

In view of the foregoing, it is believed that all claims patentably define the subject invention over the prior art of record and are in condition for allowance. The undersigned requests that the Board overturn the rejection of all claims and hold that all of the claims of the above referenced application are allowable.

Respectfully submitted,

Date: November 8, 2005

  
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## (8) CLAIMS APPENDIX

The claims involved in this Appeal are as follows:

1. A method of providing a user computer with access to files of a network, the method comprising:
  - establishing a communication link from the user computer to an access control system of the network;
  - launching a viewer program that controls a status of the communication link;
  - detecting times when the user computer is not actively sending or receiving data from the network, and downloading ad files from the network to the user computer during such times, such that the viewer program maintains a pool of ad files at the user computer for display and performs ad pool management tasks;
  - periodically opening a viewer program window in which a next ad file from the ad file pool is displayed;
  - hiding the viewer program window after a predetermined number of ad files from the ad file pool have been played and keeping the viewer program window hidden for a predetermined quiet interval; and
  - managing the ad file pool so as to keep track of the number of times each ad file in the ad file pool has been viewed and determine when each ad file in the ad file pool should no longer be viewed.
2. A method as defined in claim 1, wherein managing the ad file pool includes determining that an ad file should not be viewed after the ad file has been viewed a predetermined number of times.

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3. A method as defined in claim 1, wherein managing the ad file pool includes determining that an ad file should not be viewed after the ad file has been viewed for a predetermined number of calendar days.
4. A method as defined in claim 1, wherein managing the ad file pool includes discarding an oldest ad file from the ad file pool if the ad file pool size exceeds a predetermined size limit value.
5. A method as defined in claim 1, wherein managing the ad file pool includes not tracking an ad file as having been viewed if the viewing of the ad file is prematurely halted before normal completion.
6. A method as defined in claim 1, wherein the viewer program maintains an ad information table of a local database in the user computer.
7. A method as defined in claim 1, further including periodically performing fraud control, wherein the viewer program sends a pulse message to the access control system at predetermined intervals, and the access control system causes the communication link to the network to be severed if it fails to receive an expected pulse message.
8. A method as defined in claim 7, wherein the viewer program maintains an ad information table that includes ad file information initially received from the access control system, such that the viewer program compares actual ad file information determined by the user computer with corresponding ad file information in the table, and such that the access server causes the communication link to the network to be severed if there is a discrepancy.
9. A method as defined in claim 7, wherein the fraud control comprises comparing ad information in the local database with actual ad file information for the corresponding ad file, and indicating fraud if there is a discrepancy.
10. A method as defined in claim 7, wherein the viewer program terminates the network connection if fraud is indicated.

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**11. A method as defined in claim 1, wherein the access control system includes an Ad server that provides the ad files to a user, a Network Access Server that assigns a network address for an authorized user, and an Access, Authorization, and Accounting server that determines if authorization should be granted to a user.**

**12. A method as defined in claim 1, further including:**

determining ad impression viewing data corresponding to the number of times each ad file in the ad file pool has been viewed;

determining click through data corresponding to network addresses visited by the user computer during the viewing of an ad file; and

reporting the ad impression viewing data to the access control system.

**13. A method as defined in claim 1, further including storing state information for the viewer program at the user computer.**

**14. A method as defined in claim 1, wherein the viewer program displays closed captioning information.**

**15. A method as defined in claim 1, wherein the viewer program tracks the number of online network access sessions by the user computer.**

**16. A method as defined in claim 1, wherein the viewer program tracks the time spent online with network access by the user computer.**

**17. A method as defined in claim 1, wherein establishing a communication link includes:**

receiving user identification information;

verifying demographic information for the identified user stored at the access control system and providing the communication link;

collecting demographic information from the user computer in an initial registration and access operation, storing the demographic information at the access control system and identifying it

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with the registered user, and providing the communication link; and  
otherwise terminating the communication link and denying network access.

**18. A method as defined in claim 17, further including:**

determining ad impression viewing data corresponding to the number of times each ad file in the ad file pool has been viewed;

determining click through data corresponding to network addresses visited by the user during the viewing of an ad file; and

reporting the ad impression viewing data to the access control system.

**19. A method as defined in claim 18, further including preparing a Demographic Report that summarizes the reported ad impression viewing data for multiple computer users over a current time period.**

**20. A method as defined in claim 19, further including providing the Demographic Report to a computer user identified as an ad file sponsor.**

**21. A method as defined in claim 19, wherein the Demographic Report includes demographic report fields that are selected by the computer user.**

**22. A method as defined in claim 19, wherein providing the Demographic Report includes providing archival reports for prior time periods.**

**33. A user computer that receives files from an access control system connected to a network, the user computer comprising:**

a central processing unit that can establish communication with the access control server;  
program memory that stores programming instructions that are executed such that the user computer establishes a communication link from the user computer to the access control system and then launches a viewer program that controls a status of the communication link, detects times when the user computer is not actively sending or receiving data from the network, and uses such times to

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download ad files from the network to the user computer, such that the viewer program maintains a pool of ad files at the user computer for display and performs ad pool management tasks, and then periodically opens a viewer program window in which a next ad file from the ad file pool is displayed and hides the viewer program window in which a next ad file from the ad file pool is displayed, keeping the viewer program window closed for a predetermined quiet interval, wherein the viewer program manages the ad file pool so as to keep track of the number of times each ad file in the ad file pool has been viewed and determine when each ad file in the ad file pool should no longer be viewed.

**34.** A user computer as defined in claim 33, wherein the operations performed by the user computer further include managing the ad file pool includes determining that an ad file should not be viewed after the ad file has been viewed a predetermined number of times.

**35.** A user computer as defined in claim 33, wherein the operations performed by the user computer further include managing the ad file pool includes determining that an ad file should not be viewed after the ad file has been viewed for a predetermined number of calendar days.

**36.** A user computer as defined in claim 33, wherein the operations performed by the user computer further include managing the ad file pool includes discarding an oldest ad file from the ad file pool if the ad file pool size exceeds a predetermined size limit value.

**37.** A user computer as defined in claim 33, wherein the operations performed by the user computer further include managing the ad file pool includes not tracking an ad file as having been viewed if the viewing of the ad file is prematurely halted before normal completion.

**38.** A user computer as defined in claim 33, wherein the operations performed by the user computer further include the viewer program maintains an ad information table of a local database in the user computer.

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**39.** A user computer as defined in claim 33, wherein the operations performed by the user computer further include periodically performing fraud control, wherein the viewer program sends a pulse message to the access control system at predetermined intervals, and the access control system causes the communication link to the network to be severed if it fails to receive an expected pulse message.

**40.** A user computer as defined in claim 39, wherein the viewer program terminates the network connection if fraud is indicated.

**41.** A user computer as defined in claim 33, wherein the access control system includes an Ad server that provides the ad files to a user, a Network Access Server that assigns a network address for an authorized user, and an Access, Authorization, and Accounting server that determines if authorization should be granted to a user.

**42.** A user computer as defined in claim 33, wherein the operations performed by the user computer further include:

determining ad impression viewing data corresponding to the number of times each ad file in the ad file pool has been viewed;

determining click through data corresponding to network addresses visited by the user computer during the viewing of an ad file; and

reporting the ad impression viewing data to the access control system.

**43.** A user computer as defined in claim 33, wherein the operations performed by the user computer further include storing state information for the viewer program at the user computer.

**44.** A user computer as defined in claim 33, wherein the viewer program displays closed captioning information.

**45.** A user computer as defined in claim 33, wherein the viewer program tracks the number of online network access sessions by the user computer.

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46. A user computer as defined in claim 33, wherein the viewer program tracks the time spent online with network access by the user computer.

47. A program product for use in a computer system that executes program steps recorded in a computer-readable media to perform a method for providing a user computer with access to files of a network, the program product comprising:

a recordable media; and

a program of computer-readable instructions executable by the computer system to perform method steps comprising:

establishing a communication link from the user computer to an access control system of the network;

launching a viewer program that controls a status of the communication link;

detecting times when the user computer is not actively sending or receiving data from the network, and downloading ad files from the network to the user computer during such times, such that the viewer program maintains a pool of ad files at the user computer for display and performs ad pool management tasks;

periodically opening a viewer program window in which a next ad file from the ad file pool is displayed;

hiding the viewer program window after a predetermined number of ad files from the ad file pool have been played and keeping the viewer program window hidden for a predetermined quiet interval; and

managing the ad file pool so as to keep track of the number of times each ad file in the ad file pool has been viewed and determine when each ad file in the ad file pool should no longer be viewed.

48. A program product as defined in claim 47, wherein managing the ad file pool includes determining that an ad file should not be viewed after the ad file has been viewed a predetermined number of times.

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49. A program product as defined in claim 47, wherein managing the ad file pool includes determining that an ad file should not be viewed after the ad file has been viewed for a predetermined number of calendar days.
50. A program product as defined in claim 47, wherein managing the ad file pool includes discarding an oldest ad file from the ad file pool if the ad file pool size exceeds a predetermined size limit value.
51. A program product as defined in claim 47, wherein managing the ad file pool includes not tracking an ad file as having been viewed if the viewing of the ad file is prematurely halted before normal completion.
52. A program product as defined in claim 47, wherein the viewer program maintains an ad information table of a local database in the user computer.
53. A program product as defined in claim 47, further including periodically performing fraud control, wherein the viewer program sends a pulse message to the access control system at predetermined intervals, and the access control system causes the communication link to the network to be severed if it fails to receive an expected pulse message.
54. A program product as defined in claim 53, wherein the viewer program terminates the network connection if fraud is indicated.
55. A program product as defined in claim 47, wherein the access control system includes an Ad server that provides the ad files to a user, a Network Access Server that assigns a network address for an authorized user, and an Access, Authorization, and Accounting server that determines if authorization should be granted to a user.
56. A program product as defined in claim 47, further including:
  - determining ad impression viewing data corresponding to the number of times each ad file in the ad file pool has been viewed;
  - determining click through data corresponding to network addresses visited by the user

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computer during the viewing of an ad file; and  
reporting the ad impression viewing data to the access control system.

**57.** A program product as defined in claim 47, further including storing state information for the viewer program at the user computer.

**58.** A program product as defined in claim 47, wherein the viewer program displays closed captioning information.

**59.** A program product as defined in claim 47, wherein the viewer program tracks the number of online network access sessions by the user computer.

**60.** A program product as defined in claim 47, wherein the viewer program tracks the time spent online with network access by the user computer.

#### **(9) EVIDENCE APPENDIX**

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, or entered by the Examiner and relied upon by Appellant in this appeal.

#### **(10) RELATED PROCEEDINGS APPENDIX**

Since there are no applications currently being appealed that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, there is no relevant information to identify.